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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-266
	)	
Rate Regulation	)	

COMMENTS

The law firm of Mullin, Rhyne, Emmons and Topel, P.C., hereby submits, on behalf of certain operators of small cable television systems it represents, the comments prepared by said operators in connection with the Commission's proceedings designed to reduce the administrative burdens and cost of compliance of rate regulation for small cable systems. The "comments" are submitted on behalf of cable systems identified herein as "Cable Company A" (hereinafter "CCA") and "Cable Company B" (hereinafter "CCB").

While not directed specifically at the question of whether small systems owned by MSOs should be afforded the same relief as independently-owned systems with 1,000 subscribers or less, these comments are submitted to assist the Commission in its determination of "how to reduce administrative burdens and cost of compliance for cable systems subject to the Commission's rate

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regulation rules that have 1,000 or fewer subscribers." The anecdotal descriptions that follow are intended to reflect just some of the hardships faced by operators of smaller systems that are unaffiliated with large MSOs.

PROBLEM #1: AS PRESENTLY FRAMED, THE FCC'S RULES WOULD KILL EXPANSION AND IMPROVEMENT OF CERTAIN SMALL SYSTEMS WHICH ARE CLOSE TO 1,000 SUBSCRIBERS.

BACKGROUND: CCA is in the process of expanding a system with nearly 1,000 subscribers to new towns which would increase its subscriber count to over 1,000.

CCA was expanding a system with slightly fewer than 1,000 subscribers to serve new franchise areas when the FCC's proposed rules were released. Expansion would have added several hundred subscribers, but also would have brought it above the 1,000 subscriber small system threshold for rate regulation.

Despite local residents having campaigned for many years to have cable extended to their area, CCA was forced by FCC regulatory uncertainties to stop the project pending clarification. More than half the project's cost had already been invested when the project was stopped.

The expansion of systems of nearly 1,000 subscribers could be discouraged if the Commission does not change its rules. Unless situations of this type are considered, expansions of some small, rural systems may never occur in the future, despite the Cable Act's stated goal that they be encouraged. In addition, consolidation of smaller systems (i.e. serving several together through fiber optic links, etc.) and the resulting improved access to innovations (like pay-per-view, increased channels, etc.) will also be strongly discouraged. Many systems would be "stuck" under 1,000 permanently. Indeed, as the Commission has suggested "disaggregation" not only might occur, but could be encouraged.

RECOMMENDATION: In order to avoid discouraging cable systems from growing over the 1,000 level through line extensions and consolidations, the Commission should set the 1,000 level of subscribers for its regulatory purposes as of May 1, 1993 or some earlier date, possibly the date of passage of the Cable Act, and "grandfather" systems as of that date. If a system grew over 1,000 at any time following the grandfather date, the system would still be regulated under the Commission's small system definition. A reasonable upward limit could be set. This will allow systems planning or conducting system expansions or consolidations which would bring the number of subscribers over the 1,000 level to continue those expansions (which may have commenced prior to enactment of the Cable Act), without penalty, and to make them in the future.

PROBLEM #2: THE COMMISSION'S RULES FAIL TO CONSIDER THE IMPACT OF THE SMALL SYSTEM RULES ON ADJOINING TOWNS WITH CABLE

SYSTEMS FUNCTIONALLY BUT NOT PHYSICALLY INTEGRATED. AS PROPOSED, NEIGHBORING TOWNS WITH IDENTICAL CHANNEL LINEUPS, OWNERSHIP, PERSONNEL, ETC., COULD HAVE GREATLY DIFFERENT APPROVED CHARGES.

BACKGROUND: Cable Company "B" ("CCB") operates two systems, one of three thousand subscribers serving five communities and a second under 1,000 subscribers serving one community. They come within about 10 miles of each other, but are served by two headends, with identical channel lineups. The smaller, older system was rebuilt recently. The larger, newer one is less than 10 years old and has not been rebuilt, although it has been depreciated during its life.

Currently, four of the five communities served by one headend on the same system have fewer than 1,000 subscribers. The second system serves one community and is being expanded to serve two more, both under 1,000 subscribers. The total subscribers of the expanded system would exceed 1,000. The results would mean that each "system" would be exposed to the full range of rate regulation on a headend basis but would have to "dissect" its operations for purposes of calculating benchmark rates.

Systems A & B are integrated operationally and financially. They have common franchise authorities. They are served by the

[redacted]

through the same offices and computers, with the same owners, personnel, lenders, financial statements, etc. All borrowing has been done on the basis of the consolidated operations of the company as a whole, rather than on the basis of its systems or franchises. Separating these systems' operations for rate regulation ("benchmark") purposes from one another under the FCC's rules as adopted would cost as much as 5% of total revenues, with no benefit to subscribers. Six to eight separate sets of filings will have to be made to the FCC under these regulations. Wildly divergent rates for neighboring systems would be required. To charge different rates in each component community of a system will cause enormous consumer confusion and dissatisfaction.

Under cost-of-service rules, systems owned by "CCB" above, which are operationally and financially consolidated, but not technically consolidated, might be approved to charge rates of $40.00 Or more per month for basic and satellite services in one area while the neighboring (slightly larger) system with the same channels might have an approved rate of less than $20.00. This will seem grossly unfair to consumers and could put companies in danger of being forced to charge too much to some subscribers and too little to others. This problem would be further complicated if some communities within these systems have less-than-1,000 subscribers per community, and others more.

CCB initially considered serving the larger system from four headends. However, the franchise authorities and operational efficiency considerations encouraged their consolidation into one to reduce costs and improve service to customers. Now it appears that for a company to have chosen efficiency would have been a mistake, for the Commission's rules encourage more rather than fewer headends. The company would be better off with five headends, since four would be under 1,000 subscribers and hence unregulated.

If implemented as planned without modification, the Commission's rules would encourage economic waste and actually promote lower quality service for consumers. They would force companies to charge far too much to some communities and too little to others. These results should be avoided.

RECOMMENDATION: If more than 50% of the communities or 50% of the subscribers in a system are located in communities of 1,000 or fewer subscribers, the company should have the option of filing as a consolidated company under the rules regarding small systems, even though its total subscriber number and the numbers for some communities may be over that number. In addition, consolidated financial reporting and rates should be allowed as an option for operationally and technically consolidated systems.

PROBLEM #3: THE COMMISSION'S EFFECTIVE COMPETITION DEFINITION DISCOURAGES EXPANSION AND SHOULD BE MODIFIED.

Under Commission rules, all homes in approved franchise areas are counted toward the effective competition test. If a company expands to serve new areas, it will increase the percentage of homes in unserved areas which must subscribe to alternate video providers before it will be exempt from rate regulation.

In the case of CCB above, it has about 10,000 homes in its franchise areas. If it expands its smaller system to serve an additional 750 homes as currently planned, its customer count will increase to about 5,000. MMDS already serves the area and DBS is on the way early next year. 1,500 homes (30% of the 5,000 uncabled homes) must choose a competitive service before prices are deregulated. If it does not expand, many (if not most) of the 750 new households in the expansion area could be expected to take DBS or MMDS, leaving only half as many customers (750) outside of the company's present service territory to choose a competitor before deregulation occurs. In other words, it will be twice as hard for the company to reach the effective competition threshold if it expands. Expansion is therefore discouraged by the rules.

Yet the company agreed with franchise authorities, before the rules were proposed, to expand into these areas. It started construction and was forced by the rules' uncertainties to stop.

In addition, under the rules, if a cable company makes a better offer than DBS or MMDS, gives better service, etc., and a new customer hooks up, the cable company is actually penalized since the new customer is not counted toward the number choosing a competing provider. This will push cable companies to actively avoid expansion and quality service in new areas. This proposed rule thereby discourages improved service and service territory expansion, contrary to Congress' clear intent.

RECOMMENDATION: The FCC should give small, independent cable companies the option of (1) counting households for effective competition tests on the effective date of the Cable Act, and (2) allowing new cable subscribers to be counted as if they were subscribing to competing services until the launch of DBS in 1994. If a new subscriber is added to a cable system once an alternate video provider is available to that subscriber, it should be counted toward the 15% effective competition test.

This gives incentives for expansion and service improvement to cable companies, with consumers being the ultimate decision-makers about which video providers they choose.

PROBLEM #4: SMALL CABLE COMPANIES ARE FORCED TO PAY MORE FOR PROGRAMMING THAN BIG ONES.

BACKGROUND: It is common knowledge throughout the industry that certain cable programmers have felt they had no choice but to charge some of the biggest companies less than cost in order to obtain carriage. As a result, they have charged smaller companies more than they otherwise would in order to make up the shortfall. This is exactly the opposite of telephone long-distance access arrangements where big, urban companies subsidize access charges for customers in rural areas.

RECOMMENDATION: The FCC should encourage and facilitate the establishment of some sort of pooling mechanism under which companies of a certain size could purchase their programming on a bulk basis, putting them on an equal footing with the biggest MSOs.

Respectfully submitted,

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August 31, 1993

CERTIFICATE OF SERVICE

I, Joan Trepal, a secretary in the law firm of Mullin, Rhyne, Emmons and Topel, P.C., do hereby certify that I have this 31st day of August, 1993, caused to be hand delivered, copies of the foregoing "Comments" to the following:

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